

IMMIGRANTS AND REAL ESTATE

The following article was written for landlords. While the content is geared toward landlords, what follows is certainly relevant to other housing providers (Realtors®, sellers, etc.) but to housing consumers as well. There's a great deal of misinformation out there on this subject; we hope this provides clarity.

There has been (and will continue to be) much ado about immigration and the status and rights of immigrants (both documented and undocumented) in the news. What implications does all of this have for those of you in the rental industry? Do you have a responsibility to verify that those you rent to live in the States legally? Can an undocumented immigrant legally rent property in the U.S.? What's your liability if you participate in a housing transaction with someone who doesn't have appropriate documentation to prove s/he is here legally?

I can imagine that on the issue of renting to immigrants you likely fall within one of three categories. I'll leave it to you to self-identify:

- Never considered the issue,
- You don't care who they are and where they come from so long as they pay the rent, take care of the property, and don't disturb the neighbors
- Your political beliefs dictate that it would be morally wrong to rent to anyone who cannot prove they are legal residents of the U.S.

Regardless of your personal opinions or political bent, you should know that, unlike employment law, nothing in housing law makes it illegal to rent to someone who is not in the country with proper documentation. Some jurisdictions around the country have tried to make it a crime. However, this has not been attempted federally or within the states of Oregon or Washington and, to the best of our knowledge, all of the laws that were passed elsewhere in the country have either already been overturned or are in the process of being challenged in court.

People living in the U.S. who either are here legally but are not U.S. citizens or who are here without documentation have many basic rights; fair housing laws address some of those rights. If you deny housing or otherwise discriminate in the level of service provided to applicants and residents because of their race, color, or national origin (as well as other protected classes at the federal, state and local levels) you have violated the law, regardless of whether or not the person lives here legally. An applicant's immigration or citizen status simply is not a relevant factor in performing rental, credit or criminal background checks.

As always, be careful of your assumptions. Assuming some people "look like" they're here legally and others don't can lead to violations of the fair housing laws. Again,

denying applicants simply because of where they're from (either from the U.S. or from another nation) has a disproportionate impact on national origin as a protected class and is illegal. Be careful, too, of assumptions about household make up based on race or national origin. Don't assume "certain kinds of people" will rent a property then turn around and invite undocumented immigrants to stay with them. If this happens, it is more likely than not a lease violation and should be dealt with accordingly. Don't assume "certain kinds of people" have larger or extended families and base your rental decisions on that. Set reasonable occupancy standards and enforce them equally across all of your units.

So, what are your responsibilities? The Department of Homeland Security (DHS) and Immigration and Customs Enforcement (ICE) make no requirements of landlords in this regard. You are not an ICE or DHS agent and are not expected to be an expert on all the documentation needed to verify that someone entered the country legally. Frankly, I wouldn't want the liability that may come with trying to play cops and robbers.

So, how do you screen someone who either has no documentation or has alternative documentation such as a student or work visa, or Individual Taxpayer ID Number (ITIN)? First of all, talk with your screening company. Some have effective workarounds; others do not. Find one that does. Now, if the expense of a manual background check costs you more, you would be advised not to pass on the higher cost to the applicant. While that might, at first glance, appear to be a legitimate business expense, it can also be argued that it disproportionately impacts national origin as a protected class. For additional suggestions on alternative screening methods aimed at verifying the applicant is who they say they are, that they pay their bills on time, and to check their past rental and criminal histories visit www.FHCO.org/pdfs/SuggestedAltDocs.pdf.

What if an applicant provides a fake social security number when they apply to rent from you? Well, in that case, they have lied on their application and can be denied or evicted on that basis. We never recommend immigrants lie or use a false identification number. And we advise landlords to be careful to not treat applicants and residents differently because of where they come from. If you have questions about fair housing laws, let us know. That's what we're here for!

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